

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NONRULE POLICY DOCUMENT

DRAFT

Title: Effect of Amendments to Complete Applications on Statutory Review Deadlines

Identification Number: Water-012-NPD

Date Originally Effective:

Dates Revised: None

Other Policies Repealed or Amended: None

Brief Description of Subject Matter: **This non-rule policy document discusses the effect of amending a complete application in relation to the statutory review deadlines.**

Citations Affected: 327 IAC 17-4-6, IC 13-18-22-8(a), IC 13-18-23-1, 33 USC 1341(a)(1).

Disclaimer

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and, if it conflicts with these laws, the laws shall control. This nonrule policy document may be put into effect by IDEM thirty (30) days after presentation to the appropriate board. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least forty-five (45) days prior to presentation to the appropriate board. If the nonrule policy is presented to more than one (1) board, it will be effective thirty (30) days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

Background

This NPD is limited to the effects of amendments received after IDEM considers an application complete. The Indiana Department of Environmental Management must make a final agency decision (i.e., deny, grant or waive) on permits under 327 IAC 17-4 or §401 water quality certification under 33 USC 1341(a)(1) within a specific period of time. The statutory deadline for permits issued under 327 IAC 17-4 is 120 days from the receipt of an application, though there is a provision [IC 13-18-22-8(f)] to pause the countdown in cases where the application is deficient and resume the countdown when the application is complete. This NPD would not interfere with the procedure established by IC 13-18-22-8(f).

The statutory deadline for §401 water quality certification under 33 USC 1341(a)(1) is “...a reasonable period of time (which shall not exceed one year).” The Indiana General Assembly has indicated a “reasonable period of time” for Indiana to mean 120 days from receipt of a complete application [IC 13-18-23-1]. There is no provision to “pause” this countdown in the case of a deficient §401 application; instead, the countdown does not start until IDEM receives the complete application.

IDEM has a standard operating procedure (SOP) to establish internal target deadlines to manage project review efficiently. This SOP acknowledges that IDEM has a maximum of 120 days from the date a complete application is amended as stated in this NPD. These internal target deadlines are considerably shorter than the statutory deadlines of 120 days. These target deadlines make distinctions between major and

minor amendments as well as amendments early in IDEM's review and those that are received late in the review process.

Policy Resolution

IDEM shall make a final agency decision within 120 days of receiving the most recent amendment in cases where an applicant amends an application for a permit under 327 IAC 17-4 or a §401 water quality certification under 33 USC 1341(a)(1) that IDEM has already determined to be complete,. If IDEM fails to make a decision on an application by this deadline then the project will be considered permitted under IC 13-18-22-8(a) or the Water Quality Certification considered waived under IC 13-18-23-1.

Explanation

The purpose of this non-rule policy document is to clearly state the effect of amending a complete application on the statutory review deadline for individual site-specific authorizations and to establish consistency in the review time frames for permits reviewed under 327 IAC 17-4 and §401 water quality certifications reviewed under 33 USC 1341(a)(1). When an applicant needs to change their application after IDEM considers it complete, they have several options. First, they could wait until IDEM makes its final agency decision, request a modification if the decision is an approval or if the decision is a denial appeal the denial, and make alterations as part of a settlement agreement. Second, they could withdraw their application and reapply. This NPD describes a third option where IDEM can continue its review with a new 120-day deadline. This last option is the most efficient as it requires neither the applicant nor IDEM to start over completely and it avoids the appeals process. IDEM recognizes that

some amendments should take less time to review and has concurrently drafted an SOP to address target deadlines. These target deadlines are shorter than the 120-day statutory deadlines.